

**CONTRACT #4  
RFS # 327.12-023  
FA-06-16568-02**

**Department of Environment  
& Conservation  
Division of TN State Parks**

**VENDOR:  
Megasys Hospitality  
Systems, Inc.**



STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
NASHVILLE, TENNESSEE 37243-0435

JAMES H. FYKE  
COMMISSIONER

PHIL BREDESEN  
GOVERNOR

January 2, 2008

RECEIVED

JAN 07 2008

FISCAL REVIEW

Mr. James W. White, Executive Director  
Fiscal Review Committee  
8<sup>th</sup> Floor, Rachel Jackson Building  
320 Sixth Avenue North  
Nashville, Tennessee 37243

Dear Mr. White:

The Department of Environment and Conservation request approval to amend the contract with Megasys Hospitality Systems, Inc., for the Tennessee State Parks hospitality management system. The purpose of this contract amendment is to replace the contractor's MegaPro system with the contractor's Portfolio HMS system. The amendment is necessary to ensure that the system is compliant with Payment Card Industry (PCI) Data Security Standard (DSS) requirements in order to minimize the state's liability in the handling of credit card transactions.

This request is submitted less than sixty (60) days before the proposed effective date of the amendment. The upgrade has just been approved by the Information Technology Assessment and Budget Committee, which is urging expeditious implementation.

Your consideration and approval of the proposed contract will be appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "James H. Fyke", is written over the word "Sincerely,".

James H. Fyke  
Commissioner

## REQUEST: NON-COMPETITIVE AMENDMENT

APPROVED

Commissioner of Finance &amp; Administration

Date:

EACH REQUEST ITEM BELOW MUST BE DETAILED OR ADDRESSED AS REQUIRED.

1) RFS #	327.12-023-08	
2) State Agency Name :	Department of Environment and Conservation	
EXISTING CONTRACT INFORMATION		
3) Service Caption :	Hospitality Management System	
4) Contractor :	Megasys Hospitality Systems, Inc.	
5) Contract #	FA-06-16568-00	
6) Contract Start Date :	10/1/05	
7) <u>Current</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	9/30/10	
8) <u>Current</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	\$1,800,000.00	
PROPOSED AMENDMENT INFORMATION		
9) <u>Proposed</u> Amendment #	2	
10) <u>Proposed</u> Amendment Effective Date : (attached explanation required if date is < 60 days after F&A receipt)	2/1/08	
11) <u>Proposed</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	9/30/10	
12) <u>Proposed</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	\$1,950,000.00	
13) Approval Criteria : (select one)	<input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service	
14) Description of the Proposed Amendment Effects & Any Additional Service :		
State Parks hospitality management system would transition from the contractor's MegaPro product to the contractor's Portfolio HMS product. Additional services would include installation and configuration of the new software, training of system users, data conversion, and go-live support.		
15) Explanation of Need for the Proposed Amendment :		

The MegaPro product currently in use is not compliant with Payment Card Industry (PCI) Data Security Standard (DSS) requirements. Since December 2006 National Information Consortium (NIC), the state's web portal vendor has refused to allow the department to accept inn reservations over the Internet, resulting in a loss of potential revenue. In addition, the fact that MegaPro stores customer credit card numbers on state servers creates a significant potential liability for the state. With Portfolio HMS, Megasys has partnered with Shift4 for credit card processing software to meet Visa's Payment Applications Best Practices standard. With the implementation of these changes, no customer credit card numbers will be stored on state servers, eliminating the potential liability that entails.

**16) Name & Address of Contractor's Current Principal Owner(s) :**  
(not required if proposed contractor is a state education institution)

Patrick Curry 4770 S. Harvard Suite 300 Tulsa, OK 74135	Ed Mascarin 4770 S. Harvard Suite 300 Tulsa, OK 74135
--	--

**17) Documentation of Office for Information Resources Endorsement :**  
(required only if the subject service involves information technology)

select one:

☐

Documentation Not Applicable to this Request

☒

Documentation Attached to this Request

**18) Documentation of Department of Personnel Endorsement :**  
(required only if the subject service involves training for state employees)

select one:

☒

Documentation Not Applicable to this Request

☐

Documentation Attached to this Request

**19) Documentation of State Architect Endorsement :**  
(required only if the subject service involves construction or real property related services)

select one:

☒

Documentation Not Applicable to this Request

☐

Documentation Attached to this Request

**20) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :**

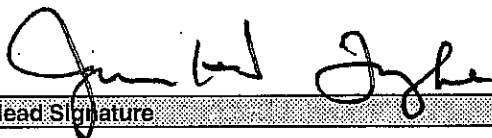
Portfolio HMS is proprietary to the contractor and is not available from any other source.

**21) Justification for the Proposed Non-Competitive Amendment :**

While Portfolio HMS is a new product and differs from MegaPro in some fundamental ways, many of its interfaces and its hardware requirements are similar to MegaPro. This means that staff re-training and investment in additional hardware will be minimal when compared with conversion to a completely new and unrelated system. Also, conversion of data with regard to each park's facilities and amenities is easily achieved because it is a related product. Recognizing that the state already has made a significant up-front investment in MegaPro, Megasys has offered to provide the new product in sole consideration of a \$2,500 increase in the monthly maintenance and support fee plus Shift4 transaction fees.

**REQUESTING AGENCY HEAD SIGNATURE & DATE :**

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OOR—signature by an authorized signatory will be accepted only in documented exigent circumstances)



Agency Head Signature

1/3/08

Date

06202



# FAX/EMAIL TRANSMITTAL

to Request OIR Procurement Endorsement

TO : Jane Chittenden, Director  
OIR Procurement & Contract Management FAX # 741-6164

FROM : Ray Register, Director of Contract Admin. FAX # ~~741-0231~~ <sup>not a fax</sup>

DATE : December 21, 2007 → 532-0231

RFS # 327.12-023-08

RE : Procurement Endorsement — Portfolio HMS Upgrade

INFORMATION SYSTEMS PLAN PROJECT: BGABH-P

NUMBER OF FAX PAGES (including cover) : N/A

The nature and scope of service detailed in the attached service procurement document(s) appears to require Office for Information Resources (OIR) review and support, because the procurement involves information technology or information systems services.

This communication seeks to ensure that OIR is aware of the procurement and has an opportunity to review the matter. Please determine whether OIR is supportive of the procurement. If you have any questions or concerns about this matter, please call Ray Register at 532-0216.

Please indicate below your response to this proposed procurement, and return this communication at your earliest convenience (note the return FAX number above).

Thank you for your help.

Attachment(s)

Must include the entire contract or amendment document and where applicable, the non-competitive contract or amendment request form. The original contract and any prior amendments that were applied to the same section of the contract must be provided with an amendment. Electronic copies of the contract, amendments, and request form without signature are acceptable.

RFP documents must be provided in electronic form.

OIR Endorsement :

*Mark Bengel (cgc)*

OIR Chief Information Officer

12/26/07

Date



STATE OF TENNESSEE  
**DEPARTMENT OF FINANCE AND ADMINISTRATION**  
OFFICE FOR INFORMATION RESOURCES

DAVE GOETZ  
COMMISSIONER

312 EIGHTH AVENUE NORTH  
SUITE 1600  
WILLIAM R. SNODGRASS TN TOWER  
NASHVILLE, TENNESSEE 37243-8030  
TELEPHONE (615) 741-7358  
FAX (615) 532-0471

JAMIE ETHERIDGE, ENTERPRISE POLICY & PLANNING  
MIKE DEDMON, BUDGET  
MAX ARNOLD, DATA CENTER OPERATIONS  
DEBBIE DEY, SOLUTIONS DELIVERY AND SUPPORT  
JASON GUNNOE, INFORMATION SECURITY  
LEIGHANNE HAYNES, IT PLANNING  
F. BRADLEY MEYERS, ENTERPRISE ARCHITECTURE,  
QUALITY ASSURANCE & TESTING  
ROGER PELHAM, DATA NETWORKING &  
TELECOMMUNICATIONS  
JEANNE SMITH, SPECIAL SERVICES

**MEMORANDUM**

**TO:** Larry Lance, Assistant Commissioner  
Department of Environment and Conservation

**FROM:** Jamie Etheridge, Chair  
IT Assessment & Budget Committee (IT-ABC)

**DATE:** December 19, 2007

**SUBJECT:** Portfolio Hospitality Management System Upgrade – (BGABH-P)

The IT-ABC has reviewed the Project Proposal and Cost Benefit Analysis for the Portfolio Hospitality Management System Upgrade – (BGABH-P). This project is approved to proceed. The IT-ABC is pleased that the Department is taking steps to remove the security vulnerability in the present system. This implementation needs to be completed expeditiously. Please provide an implementation schedule to the IT-ABC by January 5, 2008.

Please note that this approval is granted with the provision of funding availability and with the stipulation that state technical architecture and standard products will be utilized - see

<http://www.ja.nash.tenn/app/agst/>. Any requests for exception from standards must be submitted to the Chair of the IT-ABC and must include appropriate business justification. The IT-ABC reviews and approves any exceptions to the technical architecture and standards.

If you have any questions, please call Todd Ragan at 532-0245 or me at 741-7358. Also, feel free to call upon any of the various sections of OIR if we can provide you with any assistance in planning for your information technology needs.

cc: Mark Bengel, Chief Information Officer  
Sam Dunn, Chief Technology Officer  
IT-ABC Members  
William Wood, Budget Analyst

# C O N T R A C T   S U M M A R Y   S H E E T

12-11-07

<b>RFS #</b>	<b>Contract #</b>
<b>327 . 12 — 023 — 08</b>	<b>FA-06-16568-02</b>
<b>State Agency</b>	<b>State Agency Division</b>
Department of Environment and Conservation	Tennessee State Parks
<b>Contractor Name</b>	<b>Contractor ID # (FEIN or SSN)</b>
Megasys Hospitality Systems, Inc.	<input type="checkbox"/> C- or <input checked="" type="checkbox"/> V-    73-1349986-00

<b>Service Description</b>			
Central Reservation System and Hospitality Management System Services			
<b>Contract Begin Date</b>	<b>Contract End Date</b>	<b>SUBRECIPIENT or VENDOR?</b>	<b>CFDA #</b>
10/1/05	9/30/10	Vendor	

<b>Mark Each TRUE Statement:</b>	
<input checked="" type="checkbox"/> Contractor is on STARS	<input type="checkbox"/> Contractor's Form W-9 is on file in Accounts

<b>Allotment Code</b>	<b>Cost Center</b>	<b>Object Code</b>	<b>Fund</b>	<b>Funding Grant Code</b>	<b>Funding Subgrant Code</b>
327.12	301	083	11		

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2006	270,000.00				270,000.00
2007	360,000.00				360,000.00
2008	442,500.00				442,500.00
2009	390,000.00				390,000.00
2010	390,000.00				390,000.00
2011	97,500.00				97,500.00
<b>TOTAL:</b>	<b>1,950,000.00</b>				<b>1,950,000.00</b>

<b>— COMPLETE FOR AMENDMENTS ONLY —</b>			<b>State Agency Fiscal Contact &amp; Telephone #</b>
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	
2006	270,000.00		
2007	360,000.00		
2008	360,000.00	82,500.00	
2009	360,000.00	30,000.00	
2010	360,000.00	30,000.00	
2010	90,000.00	7,500.00	
<b>TOTAL:</b>	<b>1,800,000.00</b>	<b>150,000.00</b>	
<b>End Date:</b>	<b>9/30/10</b>	<b>9/30/10</b>	

<b>Contractor Ownership</b> (complete for ALL base contracts— N/A to amendments or delegated authorities)				
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input type="checkbox"/> Government
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input checked="" type="checkbox"/> NOT Minority/Disadvantaged	

<b>Contractor Selection Method</b> (complete for ALL base contracts— N/A to amendments or delegated authorities)		
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation *	<input type="checkbox"/> Alternative Competitive Method *
<input checked="" type="checkbox"/> Non-Competitive Negotiation *	<input type="checkbox"/> Negotiation w/ Government (ID, GG, GU)	

**\* Procurement Process Summary** (complete for selection by Non-Competitive Negotiation, Competitive Negotiation, OR Alternative Method)

The Department of Environment and Conservation negotiated the best possible terms and price for the state. The contractor provided the service for 5 years, originally as a subcontractor to a contractor selected pursuant to an RFP.

**AMENDMENT TWO  
TO FA-06-16568-00**

This Contract Amendment is made and entered by and between the State of Tennessee, Department of Environment and Conservation, hereinafter referred to as the "State" and Megasys Hospitality Systems, Inc., hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

**1. The following provision is added as Contract Section A.8:**

- A.8. Beginning February 1, 2008, the Contractor shall install its Portfolio HMS software product at the six (6) state resort parks to replace the MegaPro software. The State and the Contractor shall establish an implementation timeline for installing Portfolio HMS and training state parks personnel.

**2. The text of Contract Section C.1 is deleted in its entirety and replaced with the following:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed one million nine hundred fifty thousand dollars (\$1,950,000.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

**3. The text of Contract Section C.3 is deleted in its entirety and replaced with the following:**

- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:



Service Description	Amount (per compensable increment)					
	10/1/05- 9/30/06	10/1/06- 9/30/07	10/1/07- 12/31/07	2/1/08- 9/30/08	10/1/08- 9/30/09	10/1/09- 9/30/10
Maintenance and support, including Help Desk (For 6 resort parks and central accounting server, already in production)	17,050 per month	17,050 per month	17,050 per month	19,550 per month	19,550 per month	19,550 per month
Central reservation system operation	9,184 per month	9,643 per month	10,125 per month	10,125 per month	10,631 per month	11,162 per month
Successful implementation of State-requested and approved software and system modifications performed at the Contractor's location	200 per hour	200 per hour	200 per hour	200 per hour	200 per hour	200 per hour
Successful implementation of State-requested and approved software and system modifications performed by the Contractor at State Park sites	1,814 per day	1,814 per day	1,814 per day	1,814 per day	1,814 per day	1,814 per day

- c. The Contractor shall not be compensated for travel time to the primary location of service provision.
- d. A "day" shall be defined as a minimum of eight (8) hours of service. If the Contractor provides fewer than eight hours of service in a standard twenty-four hour day, the Contractor shall bill *pro rata* for only those portions of the day in which service was actually delivered. The Contractor shall not bill more than the daily rate even if the Contractor works more than eight hours in a day.

The revisions set forth herein shall be effective February 1, 2008. All other terms and conditions not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF:

MEGASYS HOSPITALITY SYSTEMS, INC.:

\_\_\_\_\_  
CONTRACTOR SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF ENVIRONMENT AND CONSERVATION:

---

JAMES H. FYKE, COMMISSIONER

DATE

APPROVED:

---

M. D. GOETZ, JR., COMMISSIONER  
DEPARTMENT OF FINANCE AND ADMINISTRATION

DATE

---

JOHN G. MORGAN, COMPTROLLER OF THE TREASURY

DATE

# CONTRACT SUMMARY SHEET

060706

#				Contract #			
327.12-023				FA-06-16568-01			
State Agency				State Agency Division			
Department of Environment and Conservation				State Parks			
Contractor Name				Contractor ID # (FEIN or SSN)			
Megasys Hospitality Systems, Inc				<input type="checkbox"/> C- or <input checked="" type="checkbox"/> V-		73-1349986-00	
Service Description							
Central Reservation System and Hospitality Management System Services. Amendment # 1 to change C.3 Payment Methodology							
Contract Begin Date		Contract End Date		SUBRECIPIENT or VENDOR?		CFDA #	
10/1/2005		9/30/2010		Vendor			
Mark Each TRUE Statement							
<input checked="" type="checkbox"/> Contractor is on STARS				<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts			
Allotment Code		Cost Center		Object Code		Fund	
327.12		301		083		11	
Funding Grant Code		Funding Subgrant Code		Funding Grant Code		Funding Subgrant Code	
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount		
2006	270,000.00				270,000.00		
2007	360,000.00				360,000.00		
2008	360,000.00				360,000.00		
2009	360,000.00				360,000.00		
2010	360,000.00				360,000.00		
2011	90,000.00				90,000.00		
TOTAL:	1,800,000.00				1,800,000.00		

OCR RELEASED  
MAY 07 2007  
TO ACCOUNTS

PROCESSED  
MAY 11 2007

COMPLETE FOR AMENDMENTS ONLY			State Agency Fiscal Contact & Telephone #	
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Fiscal Services, 18 <sup>th</sup> Floor, L&C Tower, 206-532-0292	
2006	270,000.00	Revise C.3	State Agency Budget Officer Approval  	
2007	360,000.00	Payment		
2008	360,000.00	Methodology		
2009	360,000.00			
2010	360,000.00			
2011	90,000.00		Funding Certification (certification required by 2 C.A.R. § 9-4-6113 that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)  <div style="display: flex; justify-content: space-between;"> <div>                         MAY - 9                     </div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">                         RECEIVED MAY - 2 PM 4:13 OFFICE OF STATEMENT SERVICES                     </div> </div>	
TOTAL:	1,800,000.00	0.00		
End Date:	9/30/2010			

RECEIVED  
MAY - 2 PM 4:13  
OFFICE OF  
STATEMENT SERVICES

Contractor Ownership (complete only for base contracts with contract # prefix: FA or GR)					
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input checked="" type="checkbox"/> NOT minority/disadvantaged	
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> OTHER minority/disadvantaged—		
Contractor Selection Method (complete for ALL base contracts—N/A to amendments or delegated authorities)					
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation	<input type="checkbox"/> Alternative Competitive Method			
<input type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Negotiation w/ Government (e.g., ID, GG, GU)	<input type="checkbox"/> Other			
Procurement Process Summary (complete for selection by Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)					
The Department of Environment and Conservation negotiated the best possible terms and price for the state. The contractor has provided the service for 5 years, originally as a subcontractor to a contractor selected pursuant to a RFP.					

**AMENDMENT 1  
TO CONTRACT FA-06-16568-00**

This CONTRACT, by and between the State of Tennessee, Department of Environment and Conservation, hereinafter referred to as the State, and Megasys Hospitality Systems, Inc, hereinafter referred to as the CONTRACTOR, is hereby amended as follows:

1. Delete Section SECTION C.3. Payment Methodology in its entirety and insert the following in its place:

C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

SERVICE UNIT/MILESTONE	AMOUNT				
	10/1/05-9/30/06	10/1/06-9/30/07	10/1/07-9/30/08	10/1/08-9/30/09	10/1/09-9/30/2010
Maintenance and support, including Help Desk (For 6 resort parks and central accounting server, already in production.) per month	17,050	17,050	17,050	17,050	17,050
Central reservation system operation, per month	9,184	9,643	10,125	10,631	11,162
Successful implementation of State requested and approved software and system modifications performed at Contractor's location (per hour)	200	200	200	200	200
Successful implementation of State requested and approved software and system modifications performed by contractor at state park sites (per hour)	1,814	1,814	1,814	1,814	1,814

A "day" shall be defined as a minimum of eight (8) hours of service. The Contractor shall bill only for portions of a day if the Contractor provided fewer than eight hours of service in a standard twenty-four hour day. The Contractor shall not bill more than the daily rate even if the Contractor works more than eight hour in a day.

The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

The rates specified above are only for the Six (6) existing resort parks. Contractor has no obligation to provide any software, licensing or services at any location other than the six (6) existing resort parks.

The other terms and conditions of this CONTRACT not amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF:

MEGATYS HOSPITALITY SYSTEMS, INC.:

MARK J. President / COO 4/5/07  
NAME AND TITLE DATE

MARIZ JEWART President / COO  
PRINTED NAME AND TITLE OF CONTRACTOR/GRANTEE SIGNATORY

DEPARTMENT OF ENVIRONMENT AND CONSERVATION:

James H. Fyke, Commissioner 4/26/07  
James H. Fyke, Commissioner DATE

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr. 5/1/07  
M. D. GOETZ, JR., COMMISSIONER DATE

COMPTROLLER OF THE TREASURY:

John G. Morgan 5/4/07  
JOHN G. MORGAN, COMPTROLLER OF THE TREASURY DATE

# CONTRACT SUMMARY SHEET

8-9-05

<b>RFS#</b>	<b>Contract#</b>
327.12-023	FA-06-16568-CC
<b>State/Agency</b>	<b>State/Agency Division</b>
Department of Environment and Conservation	State Parks
<b>Contractor Name</b>	<b>Contractor ID# (FEIN or SSN)</b>
Megasys Hospitality Systems, Inc.	C- or <input checked="" type="checkbox"/> V- 73-1349986-00

<b>Service Description</b>			
Central Reservation System and Hospitality Management System Services			
<b>Contract BEGIN Date</b>	<b>Contract END Date</b>	<b>Subrecipient or Vendor?</b>	<b>CFDA#</b>
10/1/2005	9/30/2010	Vendor	

<b>Mark if Statement is TRUE</b>	
<input checked="" type="checkbox"/> Contractor is on STARS as required	<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts as required

Allocation Code	Cost Center	Object Code	Fund	Funding Grant Code	Funding Subgrant Code
327.12	301	83	11		
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2006	\$ 270,000.00				\$ 270,000.00
2007	\$ 360,000.00				\$ 360,000.00
2008	\$ 360,000.00				\$ 360,000.00
2009	\$ 360,000.00				\$ 360,000.00
2010	\$ 360,000.00				\$ 360,000.00
2011	\$ 90,000.00				\$ 90,000.00
<b>TOTAL</b>	\$ 1,800,000.00	\$ -	\$ -	\$ -	\$ 1,800,000.00

<b>COMPLETE FOR AMENDMENTS ONLY</b>			<b>State Agency/Fiscal Contact &amp; Telephone</b>
<b>FY</b>	<b>Base Contract &amp; Prior Amendments</b>	<b>THIS Amendment ONLY</b>	Tom Eck 532-0292
			<b>State Agency Budget Officer Approval</b>
			Thomas W. Eck
			<b>Funding Certification</b> (certification, required by T.C.A. § 9-4-513, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)
<b>TOTAL</b>	\$ -	\$ -	
<b>End Date</b>			

<b>Contractor Ownership</b>					
<input type="checkbox"/> African American	<input type="checkbox"/> Disabled	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input checked="" type="checkbox"/> NOT minority/disadvantaged	
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> OTHER minority/disadvantaged		

<b>Contractor Selection Method</b>		
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation	<input type="checkbox"/> Alternative Procurement Method
<input checked="" type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Government	<input type="checkbox"/> Other

**Procurement Process Summary**

The Department of Environment and Conservation negotiated the best possible terms and price for the state. The contractor has provided the service for 5 years, originally as a subcontractor to a contractor selected pursuant to a RFP.

NOV - 7 2005  
DIRECTOR OF ACCOUNTS

CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
AND  
MEGASYS HOSPITALITY SYSTEMS, INC.

RECEIVED  
2005 SEP 27 AM 11:08  
DEPT. OF ENVIRONMENT  
& CONSERVATION  
FISCAL SERVICES

This Contract, by and between the State of Tennessee, Department of Environment and Conservation, hereinafter referred to as the "State" and Megasis Hospitality Systems, Inc., hereinafter referred to as the "Contractor," is for the provision of central reservation and hospitality management system services, as further defined in the "SCOPE OF SERVICES."

The Contractor is a for profit corporation. The Contractor's address is:

4770 South Harvard, Suite 300  
Tulsa, OK 74135

The Contractor's place of incorporation or organization is Oklahoma.

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide the Central Reservation System service for six (6) Tennessee State Parks currently in operation and being served by the Contractor, including reservations made through the web-based Internet application, during the current hours of operation. The Contractor shall insure that State continues to have the ability to update the Central Reservation System from any of the six (6) parks. This is a real time interface, which updates the six (6) parks and Central Reservation System, which is currently in operation.
- A.2. The Contractor shall provide technical support and maintenance Help Desk services for the Tennessee State Parks hospitality management system 24 hours per day, 7 days per week.
- A.3. The Contractor shall notify State of all system upgrades and shall furnish State with all upgrades that become available. Upgrades shall be provided to the State free of charge. In the event of upgrades, Contractor shall provide support for the two (2) previous full major software releases.
- A.4. The Contractor shall provide any and all third party software licensing, such as the ProvideX license, required to continue the hospitality management system and central reservation system functions; however, the Contractor will not have any obligation to provide user licenses in excess of the number of user licenses that Contractor is providing on the date that Contractor executes this agreement.
- A.5. The Contractor shall implement software/system modifications requested by State. Where possible, modifications will be made at the Contractor's locations. Where necessary, modifications will be made by Contractor's personnel at state resort park locations. The services apply only to the six (6) parks currently being served by Contractor. State will pay for these services at the rates listed in Section C.3.
- A.6. The Contractor warrants that it shall provide whatever modification and/or correction is required during the term of the contract to insure that the system remains integrated.
- A.7. Following each month of operation, the Contractor shall provide the State contact person with a printed report that displays the activities of the central reservation system.

B. CONTRACT TERM:

- B.1. Contract Term. This Contract shall be effective for the period commencing on October 1, 2005 and ending on September 30, 2010. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed one million eight hundred thousand dollars (\$1,800,000). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates Include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

SERVICE UNIT/MILESTONE	AMOUNT				
	10/1/05-9/30/06	10/1/05-9/30/06	10/1/05-9/30/06	10/1/05-9/30/06	10/1/05-9/30/06
Maintenance and support, including Help Desk (For 6 resort parks and central accounting server, already in production.), per month	17,050	17,050	17,050	17,050	17,050
Central reservation system operation, per month	9,184	9,643	10,125	10,631	11,162
Successful implementation of State requested and approved software and system modifications performed at Contractor's location (per hour)	200	200	200	200	200
Successful implementation of State requested and approved software and system modifications performed by contractor personnel at state park sites (per day)	1,814	1,814	1,814	1,814	1,814

A "day" shall be defined as a minimum of eight (8) hours of service. The Contractor shall bill only for portions of a day if the Contractor provided fewer than eight hours of service in a standard



twenty-four hour day. The Contractor shall not bill more than the daily rate even if the Contractor works more than eight hours in a day.

The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

The rates specified above are only for the six (6) existing resort parks. Contractor has no obligation to provide any software, licensing or services at any location other than the six (6) existing resort parks.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts involved therein.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The Contract may be terminated by either party by giving written notice to the other, at least ninety (90) days before the effective date of termination. Should the State exercise this provision, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Should the Contractor exercise this provision, the State shall have no liability to the Contractor except for those units of service which can be effectively used by the State. The final decision as to what these units of service are, shall be determined by the State. In the event of disagreement, the Contractor may file a claim with the Tennessee Claims Commission in order to seek redress.

- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed

or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:  
Andy Lyon, Assistant Commissioner  
Tennessee State Parks  
7<sup>th</sup> Floor, L&C Tower  
401 Church Street

Nashville, Tennessee 37243  
Telephone: 615-532-0001  
Fax: 615-532-0732

The Contractor:  
Patrick Curry, President  
Megasys Hospitality Systems, Inc.  
4770 South Harvard, Suite 300  
Tulsa, OK 74135  
Telephone: 918-743-0100  
Fax: 918-743-9876

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Partial Takeover. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.5. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

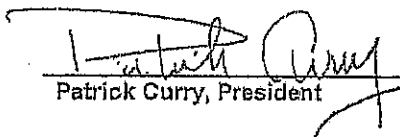
It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.6. Date/Time Hold Harmless. As required by *Tennessee Code Annotated*, Section 12-4-118, the contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.
- E.7. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, et. seq., the law governing the Tennessee Consolidated Retirement System, provides that if a retired member returns to State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to the Tennessee Consolidated Retirement System the amount of retirement benefits the Contractor received from the Retirement System during the period of this Contract.
- E.8. Performance Bond. Upon approval of the Contract by all appropriate State officials in accordance with applicable State laws and regulations, the Contractor shall furnish a performance bond in the amount equal to two hundred fifty thousand dollars (\$250,000), guaranteeing full and faithful performance of all undertakings and obligations under this Contract for the initial Contract term and all extensions thereof. The bond shall be in the manner and form prescribed by the State and must be issued through a company licensed to issue such a bond in the State of Tennessee.
- The Contractor shall obtain the required performance bond in form and substance acceptable to the State and provide it to the State no later than October 15, 2005. Failure to provide the performance bond prior to the deadline as required shall result in contract termination.
- In lieu of a performance bond, a surety deposit, in the sum of two hundred fifty thousand dollars (\$250,000), may be substituted if approved by the State prior to its submittal.
- E.9. State Rights in Software. The parties acknowledge that they have taken differing views regarding the State's ownership of a royalty-free, perpetual, nonexclusive use of the Tennessee State Parks hospitality management system, including all software components. Contractor asserts that it is the owner of the software and that State has no right as owner or perpetual licensee to the software, its improvements, modifications or components. State asserts that it currently has a non-exclusive royalty-free perpetual right to use the software. At the conclusion of the five-year term of this Contract, and provided State has not breached this Agreement, Contractor acknowledges that the State will then acquire a royalty-free, perpetual, nonexclusive right to operate the Tennessee State Parks hospitality management system and all components thereof, including all software components, at the six resort park locations. Should this contract be terminated at any time, as a result of Contractor's inability to provide services, Contractor acknowledges that the State has a royalty-free, perpetual, nonexclusive right to operate the

Tennessee State Parks hospitality management system and all components thereof, including all software components, at the six (6) resort park locations. If this Contract is terminated at any time prior to the expiration of its five-year term, then each party will retain its claims with respect to ownership and use of the hospitality management system and all components thereto, at the existing six (6) resort park locations. Should this Contract be terminated at any time, as a result of Contractor's written acknowledgement of its inability to provide services, Contractor acknowledges that the State has a royalty-free, perpetual, nonexclusive right to operate the Tennessee State Parks hospitality management system and all components thereof, including all software components, at the six (6) resort park locations.

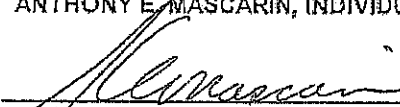
IN WITNESS WHEREOF:

MEGASYS HOSPITALITY SYSTEMS, INC.:

  
Patrick Curry, President

9/26/05  
Date

ANTHONY E. MASCARIN, INDIVIDUALLY:

  
Anthony E. Mascarin, who joins in the acknowledgements contained in Section E.9. of this contractual agreement. Nothing herein creates any personal liability on Anthony E. Mascarin.


9-26-05  
Date

DEPT. OF ENVIRONMENT  
& CONSERVATION  
FISCAL SERVICES

2005 NOV -9 PM 1:03

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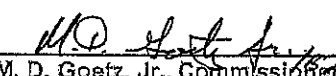
DEPARTMENT OF ENVIRONMENT AND CONSERVATION:

  
James H. Fyke, Commissioner

9/29/05  
Date

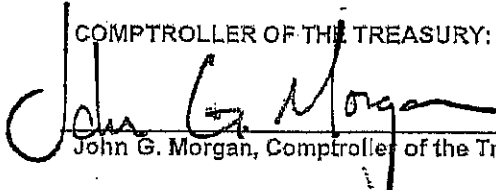
APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

  
M. D. Goetz, Jr., Commissioner

10/27/05  
Date

COMPTROLLER OF THE TREASURY:

  
John G. Morgan, Comptroller of the Treasury

11/3/05  
Date

## Leni Chick

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**From:** Ray.T Register [Ray.T.Register@state.tn.us]  
**Sent:** Thursday, January 03, 2008 2:41 PM  
**To:** Leni Chick  
**Cc:** Larry Lance  
**Subject:** Noncompetitive Amendment Request

Leni,

Attached is a noncompetitive amendment request, along with supporting documentation, in a single PDF file. The original is being sent by messenger mail. Let me know if you need additional information. Also, when is the next meeting of the contracts subcommittee?

Thanks,

Ray Register  
Director of Contract Administration  
Department of Environment and Conservation  
L & C Tower, 14th Floor  
401 Church Street  
Nashville, TN 37243

Phone: 615-532-0216  
Fax: 615-532-0231  
Email: Ray.T.Register@state.tn.us

1/7/2008